

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 11, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARTIN M.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 1:19-CV-03179-FVS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 10 and 11. This matter was submitted for consideration without oral argument. The Plaintiff is represented by Attorney D. James Tree. The Defendant is represented by Special Assistant United States Attorney Joseph J. Langkamer. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion for Summary Judgment, ECF No. 10, and **DENIES** Defendant's Motion for Summary Judgment, ECF No. 11.

## JURISDICTION

Plaintiff Martin M.<sup>1</sup> filed for supplemental security income and disability insurance benefits on April 13, 2016, alleging an onset date of March 31, 2014. Tr. 265-79. At the hearing, Plaintiff amended the alleged onset date to February 9, 2016. Tr. 52. Benefits were denied initially, Tr. 123-28, and upon reconsideration, Tr. 134-55. A hearing before an administrative law judge (“ALJ”) was conducted on June 18, 2018. Tr. 40-62. Plaintiff was represented by counsel and testified at the hearing with an interpreter. *Id.* The ALJ denied benefits, Tr. 15-37, and the Appeals Council denied review. Tr. 1. The matter is now before this court pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

## BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 52 years old at the time of the hearing. *See* Tr. 301. He communicates in Spanish, and cannot understand or speak English. Tr. 304. He completed eleventh grade. Tr. 306. At the time of the hearing Plaintiff lived at a

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<sup>1</sup> In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first name and last initial, and, subsequently, Plaintiff’s first name only, throughout this decision.

1 shelter. Tr. 55. Plaintiff has work history as a preform lightmaker, fruit packer,  
2 production helper, and material handler. Tr. 52-58. Plaintiff testified that he  
3 cannot work because he would have an anxiety attack and “need to leave.” Tr. 50-  
4 51. He reported that he has anxiety “flare-ups” daily and they last “all day,” and  
5 he has depression “[l]ike that sometimes I’m happy and I feel like I go somewhere  
6 and then later I’ll be crying.” Tr. 50-51.

### 7 STANDARD OF REVIEW

8 A district court’s review of a final decision of the Commissioner of Social  
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
10 limited; the Commissioner’s decision will be disturbed “only if it is not supported  
11 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,  
12 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a  
13 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159  
14 (quotation and citation omitted). Stated differently, substantial evidence equates to  
15 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and  
16 citation omitted). In determining whether the standard has been satisfied, a  
17 reviewing court must consider the entire record as a whole rather than searching  
18 for supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its  
20 judgment for that of the Commissioner. “The court will uphold the ALJ’s  
21 conclusion when the evidence is susceptible to more than one rational

1 interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.  
2 2008). Further, a district court will not reverse an ALJ’s decision on account of an  
3 error that is harmless. *Id.* An error is harmless where it is “inconsequential to the  
4 [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation omitted).  
5 The party appealing the ALJ’s decision generally bears the burden of establishing  
6 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within  
9 the meaning of the Social Security Act. First, the claimant must be “unable to  
10 engage in any substantial gainful activity by reason of any medically determinable  
11 physical or mental impairment which can be expected to result in death or which  
12 has lasted or can be expected to last for a continuous period of not less than twelve  
13 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s  
14 impairment must be “of such severity that he is not only unable to do his previous  
15 work[,] but cannot, considering his age, education, and work experience, engage in  
16 any other kind of substantial gainful work which exists in the national economy.”  
17 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to  
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
20 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
21 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b), 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
12 §§ 404.1520(c), 416.920(c).

13 At step three, the Commissioner compares the claimant’s impairment to  
14 severe impairments recognized by the Commissioner to be so severe as to preclude  
15 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
16 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more  
17 severe than one of the enumerated impairments, the Commissioner must find the  
18 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

19 If the severity of the claimant’s impairment does not meet or exceed the  
20 severity of the enumerated impairments, the Commissioner must pause to assess  
21 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
3 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
8 If the claimant is capable of performing past relevant work, the Commissioner  
9 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).  
10 If the claimant is incapable of performing such work, the analysis proceeds to step  
11 five.

12 At step five, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing other work in the national economy.  
14 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,  
15 the Commissioner must also consider vocational factors such as the claimant's age,  
16 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
17 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
18 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
19 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
20 work, analysis concludes with a finding that the claimant is disabled and is  
21 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

1 The claimant bears the burden of proof at steps one through four. *Tackett v.*  
 2 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,  
 3 the burden shifts to the Commissioner to establish that (1) the claimant is capable  
 4 of performing other work; and (2) such work “exists in significant numbers in the  
 5 national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*,  
 6 700 F.3d 386, 389 (9th Cir. 2012).

### 7 **ALJ’S FINDINGS**

8 At step one, the ALJ found that Plaintiff has not engaged in substantial  
 9 gainful activity since February 9, 2016, the amended alleged onset date. Tr. 23.

10 At step two, the ALJ found that Plaintiff has the following severe impairments:  
 11 cervical disc desiccation and strain; bipolar disorder; major depressive disorder;  
 12 posttraumatic stress disorder (PTSD); and psychotic disorder. Tr. 23. At step  
 13 three, the ALJ found that Plaintiff does not have an impairment or combination of  
 14 impairments that meets or medically equals the severity of a listed impairment. Tr.  
 15 24. The ALJ then found that Plaintiff has the RFC

16 to perform medium work as defined in 20 CFR 404.1567(c) and 416.967(c).  
 17 The claimant can occasionally crawl, and can bilaterally reach overhead  
 frequently. The claimant must avoid concentrated exposure to extreme cold.  
 18 The claimant is able to understand, remember, and carry out simple, routine,  
 repetitive tasks and instructions. He is able to maintain attention and  
 concentration on simple, routine tasks for two-hour intervals between  
 19 regularly scheduled breaks. He requires a predictable work environment  
 with seldom changes, in which he is not required to make judgments or  
 20 decisions. He is precluded from fast-paced production rate of work. He is  
 precluded from public interaction, and can have only superficial interaction  
 21 with coworkers and supervisors, meaning he is unable to engage in  
 collaborative or teamwork tasks. The claimant can work in the vicinity of

1 no more than ten coworkers. He is more suited for dealing with things,  
2 rather than people.

3 Tr. 26. At step four, the ALJ found that Plaintiff is unable to perform any past  
4 relevant work. Tr. 30. At step five, the ALJ found that considering Plaintiff's age,  
5 education, work experience, and RFC, there are jobs that exist in significant  
6 numbers in the national economy that Plaintiff can perform, including janitor and  
7 hand packager. Tr. 30-31. On that basis, the ALJ concluded that Plaintiff has not  
8 been under a disability, as defined in the Social Security Act, from February 9,  
9 2016, through the date of the decision. Tr. 31.

## 10 ISSUES

11 Plaintiff seeks judicial review of the Commissioner's final decision denying  
12 him disability insurance benefits under Title II of the Social Security Act and  
13 supplemental security income benefits under Title XVI of the Social Security Act.  
14 ECF No. 10. Plaintiff raises the following issues for this Court's review:

- 15 1. Whether the ALJ properly considered Plaintiff's symptom claims; and
- 16 2. Whether the ALJ properly considered the medical opinion evidence.

## 17 DISCUSSION

### 18 A. Plaintiff's Symptom Claims

19 An ALJ engages in a two-step analysis when evaluating a claimant's  
20 testimony regarding subjective pain or symptoms. "First, the ALJ must determine  
21 whether there is objective medical evidence of an underlying impairment which  
could reasonably be expected to produce the pain or other symptoms alleged."



1 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not  
2 required to show that her impairment could reasonably be expected to cause the  
3 severity of the symptom he has alleged; he need only show that it could reasonably  
4 have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591  
5 (9th Cir. 2009) (internal quotation marks omitted).

6 Second, “[i]f the claimant meets the first test and there is no evidence of  
7 malinger, the ALJ can only reject the claimant’s testimony about the severity of  
8 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
9 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal  
10 citations and quotations omitted). “General findings are insufficient; rather, the  
11 ALJ must identify what testimony is not credible and what evidence undermines  
12 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th  
13 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ  
14 must make a credibility determination with findings sufficiently specific to permit  
15 the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
16 testimony.”). “The clear and convincing [evidence] standard is the most  
17 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
18 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
19 924 (9th Cir. 2002)).

20 Here, the ALJ found that “[w]hile some degree of limitation is warranted,  
21 the assigned residual functional capacity allows for significant credence to

1 [Plaintiff's] subjective allegations, and further limitation cannot be reasonably  
2 supported by the record." Tr. 27. More specifically, the ALJ noted (1) "[a]t  
3 psychological evaluation, the validity of results was questioned due to suspicion of  
4 poor effort and malingering," and (2) Plaintiff has "refused recommended  
5 treatment and has a documented history of poor compliance." Tr. 27. As an initial  
6 matter, when there is affirmative evidence of malingering, the ALJ is relieved of  
7 the burden of providing specific, clear, and convincing reasons to discount  
8 Plaintiff's testimony. *See Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155,  
9 1160 (9th Cir. 2008). Malingering has been defined as "the intentional production  
10 of false or grossly exaggerated physical or psychological symptoms, motivated by  
11 external incentives such as avoiding military duty, avoiding work, obtaining  
12 financial compensation, evading criminal prosecution, or obtaining drugs." *Mobbs*  
13 *v. Berryhill*, 2017 WL 6759321, at \*11 n.5 (W.D. Wash. Dec. 29, 2017) (quoting  
14 the *American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental*  
15 *Disorders* (Text Revision 4th ed. 2000) at 739).

16 Here, the ALJ generally found that the validity of Dr. Cline's evaluation  
17 results was "questioned due to suspicion of poor effort and malingering." Tr. 27.  
18 However, as noted by Plaintiff, a plain reading of Dr. Cline's evaluation indicates  
19 that she specifically found only that (1) it was "unusual" that Plaintiff was able to  
20 repeat 3 digits forward and 3 digits backward, "and when [digit span backwards] is  
21 greater than [digit span forwards] malingering may be suspected"; and (2)

1 Plaintiff's ability to make five consecutive correct calculations on serial  
2 subtraction was "rather inconsistent with his poor digit span performance." ECF  
3 No. 10 at 14 (citing Tr. 394). Moreover, and most notably, the ALJ failed to  
4 consider Dr. Cline's additional finding that Plaintiff's test scores at the time of the  
5 assessment "indicates an above average level of effort and cooperation with the  
6 task and decreases the likelihood he is malingering at this time." Tr. 27, 391.  
7 Based on the foregoing, the Court finds the ALJ's general reference to this single  
8 evaluation does not rise to the level of substantial evidence to support a finding of  
9 malingering such that it would discharge the ALJ's burden to provide specific,  
10 clear, and convincing reasons to reject Plaintiff's symptom claims. *See*  
11 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (holding that "we must  
12 consider the entire record as a whole, weighing both the evidence that supports and  
13 the evidence that detracts from the Commissioner's conclusion, and may not affirm  
14 simply by isolating a specific quantum of supporting evidence." (citation and  
15 internal quotation marks omitted))

16 In addition, the Court finds that the reasons offered by the ALJ for rejecting  
17 Plaintiff's symptom claims are not specific, clear, convincing. *Ghanim*, 763 F.3d  
18 at 1163. First, poor effort can provide substantial evidence to discount a claimant's  
19 symptom claims. *See Thomas*, 278 F. 3d at 959 (An ALJ may properly rely on a  
20 claimant's efforts to impede accurate testing of a claimant's limitations when  
21 finding a claimant less than credible); *see also Tonapetyan v. Halter*, 242 F.3d

1 1144, 1148 (9th Cir. 2001) (the ALJ appropriately considered Plaintiff's tendency  
2 to exaggerate when assessing Plaintiff's credibility, which was shown in a doctor's  
3 observation that Plaintiff was uncooperative during cognitive testing but was  
4 "much better" when giving reasons for being unable to work). However, as  
5 discussed in detail above, the ALJ's general finding that "the validity of results  
6 was questioned due to suspicion of poor effort and malingering" is not supported  
7 by substantial evidence in the overall record; thus, to the extent the ALJ rejected  
8 Plaintiff's symptom claims due to "poor effort and malingering," this was not a  
9 specific, clear, and convincing reason.

10 Second, the ALJ found Plaintiff "has refused recommended treatment and  
11 has a documented history of poor compliance." Tr. 27. Further, "[t]he fact there is  
12 evidence [Plaintiff] has not fully cooperated suggests inconsistencies between  
13 [Plaintiff's] allegations and the record evidence," and noncompliance "suggests  
14 [Plaintiff's] limitations are less than alleged, as one would expect strict compliance  
15 with medical directives given the alleged severity of symptoms." Tr. 27.

16 Unexplained, or inadequately explained, failure to seek treatment or follow a  
17 prescribed course of treatment may be the basis for an adverse credibility finding  
18 unless there is a showing of a good reason for the failure. *Orn v. Astrue*, 495 F.3d  
19 625, 638 (9th Cir. 2007). In support of this finding the ALJ cites a single treatment  
20 note from January 2016 indicating that Plaintiff "is declining any medical  
21 interventions, labs, vaccines," and "has a history of poor compliance." Tr. 27, 380.

1 However, the Court’s review of this same treatment note indicates that Plaintiff  
2 also expressed interest in medication for his bipolar diagnosis, and was “agreeable”  
3 to undergoing a “more thorough psychiatric evaluation.” Tr. 380. Moreover, as  
4 argued by Plaintiff, the record includes consistent evidence that Plaintiff was  
5 attending his appointments and taking his medication as prescribed. ECF No. 10 at  
6 15 (citing Tr. 416, 422, 428, 433, 444, 449, 484, 491, 498, 507, 514, 520, 527, 535,  
7 541, 560, 576, 581, 602-612).

8 Finally, Plaintiff argues that “his mental health symptoms did sometimes  
9 present a barrier to obtaining treatment.” ECF No. 10 at 15. More specifically,  
10 Plaintiff “expressed being uninterested in participating in treatment due to paranoid  
11 delusions that the government and the therapist were trying to control him,” and on  
12 several occasions he refused blood draws due to “an intense fear of needles.” ECF  
13 No. 10 at 15-16 (citing Tr. 415, 419, 426, 506). Pursuant to Social Security Ruling  
14 16-3p, an ALJ “will not find an individual’s symptoms inconsistent with the  
15 evidence in the record on this basis without considering possible reasons he or she  
16 may not comply with treatment or seek treatment consistent with the degree of his  
17 or her complaints.” Social Security Ruling (“SSR”) 16-3p at \*8-\*9 (March 16,  
18 2016), *available at* 2016 WL 1119029. For instance, where the evidence suggests  
19 lack of mental health treatment is part of a claimant's mental health condition, it  
20 may be inappropriate to consider a claimant's lack of mental health treatment as  
21 evidence of a lack of credibility. *See Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th

1 Cir. 1996). Here, the ALJ failed to consider the “possible reason” that Plaintiff did  
2 not comply with treatment due to mental health symptoms; nor does the ALJ cite  
3 any specific evidence of noncompliance during the relevant adjudicatory period,  
4 aside from a single treatment note that itself generally references a “history of poor  
5 compliance.” For all of these reasons, the Court finds the ALJ’s brief reference to  
6 Plaintiff’s alleged poor compliance with recommended treatment was not a  
7 specific, clear, and convincing reason to reject Plaintiff’s symptom claims.

8 Third, and finally, the ALJ noted that “Plaintiff has admitted some lack of  
9 motivation to work, which is likely to play some role in his lack of employment.”  
10 Tr. 27. The ALJ may draw reasonable inferences regarding a claimant's  
11 motivation to work. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir.  
12 2008); *see also Thomas*, 278 F.3d at 959 (poor work history or a showing of “little  
13 propensity to work” during one's lifetime may be considered as a factor in  
14 evaluating Plaintiff's symptom claims). Here, in support of this finding, the ALJ  
15 cites Plaintiff’s statement to Dr. Cline during the examining evaluation that he “is  
16 not sure if he wants to go back to work or not at this time.” Tr. 27 (citing Tr. 380).  
17 However, as noted by Plaintiff, treating providers throughout the record indicated  
18 that Plaintiff’s depression decreased his motivation, including his motivation to  
19 look for work. Tr. 443, 498, 506, 514, 573. Thus, “[b]ecause [Plaintiff’s] lack of  
20 motivation to work corresponds directly to the deterioration of his mental health,  
21 this lack of motivation to work should be seen as a symptom of his depression, not

1 a clear and convincing reason to reject his testimony.” ECF No. 10 at 17.  
2 Moreover, as noted by Plaintiff, the ALJ’s finding “is especially egregious given  
3 [Plaintiff’s] long work history dating back to the late eighties, including working  
4 for twenty years at the same company.” ECF No. 10 at 17 (citing Tr. 294, 314).  
5 Thus, based on the overall record, a single admission that Plaintiff had “some lack  
6 of motivation to work” was not a clear and convincing reason, supported by  
7 substantial evidence, for the ALJ to discount Plaintiff’s symptom claims.

8 For all of these reasons, the ALJ’s rejection of Plaintiff’s symptom claims is  
9 not supported by clear and convincing reasons, and must be reconsidered on  
10 remand.

### 11 **B. Medical Opinions**

12 There are three types of physicians: “(1) those who treat the claimant  
13 (treating physicians); (2) those who examine but do not treat the claimant  
14 (examining physicians); and (3) those who neither examine nor treat the claimant  
15 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”  
16 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted).  
17 Generally, a treating physician's opinion carries more weight than an examining  
18 physician's, and an examining physician's opinion carries more weight than a  
19 reviewing physician's. *Id.* If a treating or examining physician's opinion is  
20 uncontradicted, the ALJ may reject it only by offering “clear and convincing  
21 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d

1 1211, 1216 (9th Cir. 2005). Conversely, “[i]f a treating or examining doctor's  
2 opinion is contradicted by another doctor's opinion, an ALJ may only reject it by  
3 providing specific and legitimate reasons that are supported by substantial  
4 evidence.” *Id.* (citing *Lester*, 81 F.3d at 830-31). “However, the ALJ need not  
5 accept the opinion of any physician, including a treating physician, if that opinion  
6 is brief, conclusory and inadequately supported by clinical findings.” *Bray v.*  
7 *Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (quotation and  
8 citation omitted).

9 The opinion of an acceptable medical source such as a physician or  
10 psychologist is given more weight than that of an “other source.” *See* SSR 06-03p  
11 (Aug. 9, 2006), *available at* 2006 WL 2329939 at \*2; 20 C.F.R. § 416.927(a).  
12 “Other sources” include nurse practitioners, physician assistants, therapists,  
13 teachers, social workers, and other non-medical sources. 20 C.F.R. § 416.913(d).  
14 The ALJ need only provide “germane reasons” for disregarding an “other source”  
15 opinion. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). However, the  
16 ALJ is required to “consider observations by nonmedical sources as to how an  
17 impairment affects a claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d  
18 1226, 1232 (9th Cir. 1987).

19 Plaintiff argues the ALJ erroneously considered the opinions of examining  
20 psychologist R.A. Cline, Psy.D., treating social worker Ivonne Garcia, MSW, and  
21 testifying medical expert Donna Veraldi, Ph.D., ECF No. 10 at 8-13.



1                   *I. R.A. Cline, Psy.D.*

2                   In February 2016, Dr. Cline examined Plaintiff and found marked  
3 limitations in his ability to communicate and perform effectively in a work setting,  
4 maintain appropriate behavior in a work setting, and complete a normal workday  
5 and work week without interruptions from psychologically based symptoms. Tr.  
6 390-94. The ALJ gave Dr. Cline's opinion little weight for several reasons. Tr.  
7 28. First, the ALJ correctly noted that Dr. Cline's opinion "is self-limited to a nine-  
8 month period, making it relevant to a very short period during the adjudicatory  
9 timeframe, a period of less than one year." Tr. 28. To be found disabled, a  
10 claimant must be unable to engage in any substantial gainful activity due to an  
11 impairment which "can be expected to result in death or which has lasted or can be  
12 expected to last for a continuous period of not less than 12 months." 42 U.S.C. §  
13 423(d)(1)(A); *see also Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012).

14                  In addition, the ALJ discounted Dr. Cline's opinion because (1) it was  
15 "based on a one-time examination, without benefit of the entire record"; and (2)  
16 the opinion was in check-the-box form "without substantial narrative rationale in  
17 support of the limitations assigned," including lack of indication as to how  
18 "possible malingering" had "any effect on the assigned capacity." Tr. 28. First,  
19 the Court notes that while the extent to which a medical source is "familiar with  
20 the other information in [the claimant's] case record" is a relevant factor in  
21 weighing a medical opinion, the opinions of examining physicians and

1 psychologists should not be dismissed on that basis. 20 C.F.R. §§ 404.1527,  
2 416.927; *Lester*, 81 F.3d at 830. This is not a specific, legitimate reason for giving  
3 little weight to Dr. Cline’s opinion.

4 Second, relevant factors to evaluating any medical opinion include the  
5 amount of relevant evidence that supports the opinion, the quality of the  
6 explanation provided in the opinion, and the consistency of the medical opinion  
7 with the record as a whole. *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631.  
8 However, as noted by Plaintiff, “there is no authority that a ‘check-the-box’ form is  
9 any less reliable than any other type of form.” ECF No. 10 at 10 (citing *Trevizo v.*  
10 *Berryhill*, 871 F.3d 664, 667 n.4 (9th Cir. 2017)). Here, Dr. Cline’s own clinical  
11 findings included moderate mood instability and moderate psychosis; and his  
12 mental status examination findings during the evaluation included altered  
13 perception, reports of hearing voices, a sense of paranoia, fund of knowledge not  
14 within normal limits, memory not within normal limits, poor ability to think  
15 abstractly, and limited insight and judgment. Tr. 394. Moreover, as discussed  
16 above, the ALJ cites Dr. Cline’s findings of “possible malingering” and “results  
17 suggestive of symptom magnification,” but fails to consider Dr. Cline’s  
18 contemporaneous note that Plaintiff’s test scores at the time of the evaluation  
19 indicated an “above average level of effort and cooperation with the task and  
20 decrease[d] the likelihood that he [was] malingering at [that] time.” Tr. 28, 391,  
21 394.

1 Finally, the Court notes that when weighing an opinion, the ALJ must do  
2 more than state a conclusion. Rather, the ALJ must “set forth his own  
3 interpretations and explain why they, rather than the doctors’, are correct.”  
4 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998). “This can be done by setting  
5 out a detailed and thorough summary of the facts and conflicting clinical evidence,  
6 stating his interpretation thereof, and making findings.” *Id.* Here, the ALJ fails to  
7 summarize and interpret the entirety of Dr. Cline’s evaluation; thus, the ALJ’s  
8 conclusion that Dr. Cline failed to give adequate explanation for his opinion is not  
9 supported by substantial evidence. This was not a specific and legitimate reason  
10 for the ALJ to reject Dr. Cline’s opinion, and it should be reconsidered on remand.

11 2. *Ivonne Garcia, MSW*

12 In April 2017, treating provider Ivonne Garcia opined that Plaintiff had  
13 marked limitations in his ability to work in coordination with or proximity to  
14 others without being distracted by them; interact appropriately with the general  
15 public; ask simple questions or request assistance; get along with co-workers or  
16 peers without distracting them or exhibiting behavioral extremes; maintain socially  
17 appropriate behavior and adhere to basic standards of neatness and cleanliness;  
18 respond appropriately to changes in the work setting; be aware of normal hazards  
19 and take appropriate precautions; and set realistic goals or make plans  
20 independently of others. Tr. 463-65. Ms. Garcia also opined that Plaintiff would  
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1 be off-task 21-30% during a 40-hour week schedule, and would miss 2 days per  
2 month if he attempted to work a 40-hour week work schedule. Tr. 465.

3 The ALJ gave Ms. Garcia's opinion little weight because her opinion was  
4 completed "exclusively on a check-the-box form, without reference to treatment  
5 records, record evidence, and without any analysis or rationale. The basis of the  
6 opinion is wholly unclear, and the record does not contain substantial evidence  
7 supporting the level of limitation assigned." Tr. 28. An ALJ may permissibly  
8 reject check -box reports that do not contain any explanation of the bases for their  
9 conclusions. *See Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996). However, the  
10 Ninth Circuit has held that when a treating physician's check-box opinion was  
11 "based on significant experience with [Plaintiff] and supported by numerous  
12 records, [it was] therefore entitled to weight that an otherwise unsupported and  
13 unexplained check-box form would not merit." *See Garrison v. Colvin*, 759 F.3d  
14 995, 1013 (9th Cir. 2014); *see also Trevizo*, 871 F.3d at 667 n.4 ("[T]here is no  
15 authority that a 'check-the-box' form is any less reliable than any other type of  
16 form"). As noted by Plaintiff, Ms. Garcia made "observations in her treatment  
17 notes that support the limitations she identified," including notations of anxious  
18 affect, depressed mood, pressured speech, tangential thought process, paranoia,  
19 and racing thoughts. ECF No. 10 at 13; Tr. 481, 483, 488-90, 497, 503. Because  
20 the ALJ failed to consider that Ms. Garcia was a treating provider with arguably  
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1 “significant experience” with Plaintiff, this was not a specific and germane reason  
2 to reject Ms. Garcia’s treating opinion.

3 Finally, the ALJ concluded, without any citation to the record, that “the  
4 record does not contain substantial evidence supporting the level of limitation  
5 assigned” by Ms. Garcia. However, as above, when weighing an opinion, the ALJ  
6 must do more than state a conclusion. Rather, the ALJ must “set forth his own  
7 interpretations and explain why they, rather than the doctors’, are correct.”  
8 *Reddick*, 157 F.3d at 725. Here, the ALJ fails to summarize and interpret any  
9 “facts and conflicting clinical evidence” in support of this finding. *Id.* Thus, to the  
10 extent the ALJ rejected Ms. Garcia’s opinion as unsupported by substantial  
11 evidence in the overall record, this was not a specific and germane reason.

12 For all of these reasons, the Court finds the ALJ erred in considering Ms.  
13 Garcia’s treating provider opinion, and it must be reconsidered on remand.

14 *3. Donna Veraldi, Ph.D.*

15 The ALJ summarized Dr. Veraldi’s expert testimony as finding that  
16 Plaintiff’s “conditions caused moderate limitations in the ‘paragraph B’ criteria,  
17 with restrictions *bordering on marked* limitation in interaction and adaption.” Tr.  
18 27 (emphasis added). The ALJ gave Dr. Veraldi’s expert testimony substantial  
19 weight. Tr. 27-28. Plaintiff argues the ALJ’s summary of Dr. Veraldi’s testimony  
20 is “contradicted by the transcript of the hearing,” and in support of this finding he  
21 cites Dr. Veraldi’s specific testimony that Plaintiff would be in the “moderate to

1 marked range” in the area of adaptation and interaction. Tr. 47. Defendant argues  
2 that “[a]lthough Dr. Veraldi initially equivocated about whether Plaintiff had  
3 moderate or marked limitations in certain functional areas, she ultimately  
4 confirmed that, from an adaptation standpoint, Plaintiff could function in an  
5 environment that was predictable and had seldom to no change.” ECF No. 11 at 8.

6 Defendant is correct that “the ALJ is responsible for translating and  
7 incorporating clinical findings into a succinct RFC.” *Rounds v. Comm’r Soc. Sec.*  
8 *Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015); *see also Turner v. Comm’r of Soc.*  
9 *Sec.*, 613 F.3d 1271, 1223 (9th Cir. 2010) (an ALJ’s findings need only be  
10 consistent with a physician’s credited limitations, not identical to them). However,  
11 as opposed to an alleging any error in formulating Plaintiff’s RFC, Plaintiff  
12 specifically argues that the ALJ erred in considering Dr. Veraldi’s testimony as to  
13 the ALJ’s “paragraph B” findings at step three, and that “[g]iven the ALJ’s finding  
14 that [Plaintiff] had a marked limitation in interacting with others, properly  
15 crediting Dr. Veraldi’s opinion that [Plaintiff] had a marked limitation in adaption  
16 would lead to a finding of disability.” ECF No. 10 at 9. Thus, the record, as it  
17 stands, does not permit the Court to conclude that any error in the ALJ’s finding  
18 would be harmless. *See Molina*, 674 F.3d at 1115 (error is harmless “where it is  
19 inconsequential to the [ALJ’s] ultimate nondisability determination.”). In light of  
20 the need to remand for reconsideration of Plaintiff’s symptom claims, and the  
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1 medical opinions discussed above, the ALJ should reconsider Dr. Veraldi's  
2 testimony on remand if indicated.

### 3 REMEDY

4 The decision whether to remand for further proceedings or reverse and  
5 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
6 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate  
7 where "no useful purpose would be served by further administrative proceedings,  
8 or where the record has been thoroughly developed," *Varney v. Sec'y of Health &*  
9 *Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by  
10 remand would be "unduly burdensome[.]" *Terry v. Sullivan*, 903 F.2d 1273, 1280  
11 (9th Cir. 1990); *see also Garrison v. Colvin*, 759 F.3d 995, 1021 (noting that a  
12 district court may abuse its discretion not to remand for benefits when all of these  
13 conditions are met). This policy is based on the "need to expedite disability  
14 claims." *Varney*, 859 F.2d at 1401. But where there are outstanding issues that  
15 must be resolved before a determination can be made, and it is not clear from the  
16 record that the ALJ would be required to find a claimant disabled if all the  
17 evidence were properly evaluated, remand is appropriate. *See Benecke v.*  
18 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172,  
19 1179-80 (9th Cir. 2000).

20 The Court finds that further administrative proceedings are appropriate. *See*  
21 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)

(remand for benefits is not appropriate when further administrative proceedings would serve a useful purpose). Here, the ALJ improperly considered Plaintiff's symptom claims and the medical opinion evidence, which calls into question whether the assessed RFC, and resulting hypothetical propounded to the vocational expert, are supported by substantial evidence. "Where," as here, "there is conflicting evidence, and not all essential factual issues have been resolved, a remand for an award of benefits is inappropriate." *Treichler*, 775 F.3d at 1101. Instead, the Court remands this case for further proceedings. On remand, the ALJ must reconsider Plaintiff's symptom claims. In addition, the ALJ should reconsider the medical opinion evidence, and provide legally sufficient reasons for evaluating the opinions, supported by substantial evidence. If necessary, the ALJ should order additional consultative examinations and, if appropriate, take additional testimony from a medical expert. Finally, the ALJ should reconsider the remaining steps in the sequential analysis, reassess Plaintiff's RFC and, if necessary, take additional testimony from a vocational expert which includes all of the limitations credited by the ALJ.

**ACCORDINGLY, IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 10, is **GRANTED**, and the matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.
2. Defendant's Motion for Summary Judgment, ECF No. 11, is **DENIED**.



1 3. Application for attorney fees may be filed by separate motion.

2 The District Court Clerk is directed to enter this Order and provide copies to  
3 counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

4 **DATED** September 11, 2020.



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10 Stanley A. Bastian  
11 Chief United States District Judge  
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